PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JUNE 11, 2020 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, JUNE 11, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, JUNE 10, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)
More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. M-CV-0075664 HANRAND, MAHNAZ v. AMAZON.COM

Defendant Amazon's Motion to Compel Arbitration

Preliminary Matters

In this limited civil case, plaintiff alleges several causes of action, which includes a cause of action for UCL violations under Business & Professions Code section 17200 et seq. A UCL claim is equitable in nature as damages are not recoverable. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1144.) There are a narrow number of equitable claims that may be pleaded in a limited civil case, which include title to personal property with an amount that does not exceed $25,000; when equity is pleaded as a defensive matter [pleaded in an answer, counter claim, or cross-complaint]; and (3) cases to vacate a judgment or order obtained in a limited civil case. (Code of Procedure sections 85, 86(b)(1)-(3); *Strachan v. American Ins. Co.* (1968) 260 Cal.App.2d 113, 117.) All other equitable claims are unlimited civil cases. (Code of Civil Procedure section 88.) Plaintiff incorrectly designated the action

as a limited civil case. The court, on its own motion, reclassifies this action as an unlimited civil case with plaintiff paying the appropriate fees related to the reclassification. (Code of Civil Procedure sections 403.040(a), 403.060.)

Judicial Notice

The court, on its own motion, takes judicial notice of the complaint. (Evidence Code section 452.)

Ruling on Motion

Defendant Amazon's motion to compel arbitration is granted. A petition seeking to compel arbitration under the FAA may be brought in state court. (*Southland Corp. v. Keating* (1984) 465 U.S. 1, 16; *Main v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1977) 67 Cal.App.3d 19, 24, disapproved of on other grounds in *Rosenthal v. Great Western Financial Securities Corp.* (1996) 14 Cal.4th 394.) The FAA governs a contractual arbitration where there is a written contract involving interstate or foreign commerce or maritime transactions. (9 U.S.C. §§1, 2.) Where the FAA governs, conflicting state law is preempted under the Supremacy Clause. (*AT&T Mobility, LLC v. Concepcion* (2011) 563 U.S. 333; 131 S.Ct. 1740, 1745-1746.) Thus, the first step of the inquiry is to determine whether the subject arbitration provision is governed by the FAA.

To reiterate, the FAA applies to contracts involving interstate commerce. (9 U.S.C. §2.) The parties need not intend to involve interstate activity as the actual involvement of interstate commerce is what controls the analysis. (*Allied-Terminix Cos., Inc. v. Dobson* (1995) 513 U.S. 265, 278.) It is Amazon that bears the burden of establishing the applicability of the FAA in this action. (*Hoover v. American Income Life Insurance Co.* (2012) 206 Cal.App.4th 1193, 1207.) Amazon has made a sufficient showing the FAA applies in this matter. Amazon is a business entity with headquarters in Washington state, conducting retail business across the country. (Complaint ¶2.) Further, the express terms of the Conditions of Use agreement state that the FAA applies to the parties. (Prestwich declaration, Exhibit A.)

With the governing law established, the next portion of the inquiry is whether arbitration should be compelled in this case. There is a strong federal policy favoring the arbitration of disputes. "Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial

forum for the resolution of claims which the contracting parties agreed to resolve by arbitration. …Congress intended to foreclose legislative attempts to undercut the enforceability of arbitration." (*Southland Corp. v. Keating* (1984) 465 U.S. 1, 16.) "[A] 'written provision in any …contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such a contract or submission …shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.' " (*Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1543.) Hence, the agreement generally must be in writing and valid under state contract law. (*Circuit City Stores, Inc. v. Najd* (9th Cir. 2002) 294 F.3d 1104, 1108.) Amazon has established the existence of a valid, enforceable arbitration agreement between the parties. (See generally Prestwich declaration.)

Plaintiff, on the other hand, has not presented sufficient contrary evidence challenging the validity of the arbitration agreement. (See generally Harand declaration.) While plaintiff alleges the arbitration agreement is unconscionable, plaintiff has not made a sufficient showing establishing unconscionability under either Washington law or California law. Specifically, plaintiff does not sufficiently establish the agreement or arbitration provision is one of adhesion, oppressive, one-sided, overly harsh, plaintiff lacked meaningful choice, or plaintiff lacked a reasonable opportunity to understand its terms. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83; *Zuver v. Airtouch Communications, Inc.* (2004) 153 Wash.2d 293.) Since Amazon has established the existence of a valid, enforceable arbitration agreement, the existence and effectiveness of which has not been sufficiently contradicted by plaintiff, the motion to compel is granted.

The court, however, declines to dismiss the action. A review of the complaint shows that it is brought against multiple defendants; not all of these defendants have been demonstrated to be subject to the arbitration agreement. A stay of the action pending arbitration, rather than dismissal, is the routine method for addressing an action after a successful motion to compel. (Code of Civil Procedure sections 1281.2, 1281.4; see e.g. *Muao v. Grosvenor Properties* (2002) 99 Cal.App.4th 1085.)

In sum, the motion is granted as to defendant Amazon. The current action is stayed pending arbitration. An OSC re status of arbitration is set for Tuesday, September 29, 2020 at 11:00 a.m. in Department 40.

The case management conference set for August 18, 2020 is vacated.

The case is also reclassified as an unlimited civil case. (Code of Civil Procedure section 403.040(a).) Plaintiff shall pay the reclassification fee under Code of Civil Procedure section 403.060.

2. M-CV-0075856 BRIGHTON 68 APTS v. FISHER, REBECCA

Defendant Rebecca Fisher's motion to set aside default judgment is denied. Defendant has failed to provide a proof of service for the motion demonstrating plaintiff was served. She also fails to attach a proposed answer to the motion as required under Code of Civil Procedure section 473.5(b). Finally, defendant has not made a sufficient showing that she lacked actual notice of the action. For all of these reasons, the motion is denied.

3. M-CV-0076036 BAGHRI HOTELS v. FLETCHER, KAREN

Defendant Karen Fletcher's Demurrer to the Complaint

Defendant Howard Herships' Joinder to the Demurrer

The court acknowledges defendant Howard Herships' joinder to the current demurrer.

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is denied.

The court, on its own motion, takes judicial notice of the complaint filed on February 20, 2020.

Ruling on Demurrer

The demurrer is sustained without leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) All properly pleaded facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) It is well-established that the statutes governing unlawful detainers are to be strictly construed. (*WDT-Winchester v. Nilsson* (1994) 27 Cal.App.4th 516, 526.) Any 3-day notice must provide the name, telephone number, and address of the person to whom rent is payable pursuant to Code of

Civil Procedure section 1161(2). Furthermore, a 3-day notice is only valid and enforceable where the landlord has strictly complied with the statutorily mandated requirements for service. (Code of Civil Procedure section 1162(a); see *Losornio v. Motta* (1998) 67 Cal.App.4th 110, 114.)

A review of the 3-day notice attached to the complaint shows that plaintiff failed to comply with the requirements of Section 1161(2). Specifically, the notice does not include the telephone number or name of the person to whom rent is payable. The proof of service attached to the notice also fails to demonstrate defendant Karen Fletcher was served with the 3-day notice. These are fatal defects that cannot be cured with an amendment. For these reasons, the complaint fails and the demurrer is sustained without leave to amend as to both defendants.

Defendant Howard Herships' Motion to Quash Service of Summons

The motion is dropped as moot in light of the court's ruling on the demurrer and joinder to demurrer.

4. S-CV-0038660 FED HOME LOAN v. BECHOLD, JERRY

The two motions for judgment on the pleadings and the motion for leave to file a first amended answer are continued to Thursday, June 25, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for the inconvenience.

5. S-CV-0039412 THORNBER, SALLY v. COLBY, DIANE

The motion to set aside judgment is continued to Friday, June 19, 2020 at 8:30 a.m. in the law and motion department to be heard by the Honorable Steven Howell.

6. S-CV-0039936 TAHOE VISTA NOTE v. VERDOM REALTY MGMT

Defendant's Motion to Extend Discovery Timeline

The motion is denied. Contrary to defendant's assertions, there has been an insufficient showing that the discovery cutoff dates were extended beyond the initial trial date set on January 21, 2020. Paragraph 4 of the settlement agreement attached to the Kaplan declaration states the parties will return to "status quo" if the settlement monies are not received, which includes the

"continuation of [the] lawsuit." There is no express statement within the settlement extending the discovery cutoff dates. Thus, the "status quo" allowed for the normal discovery cutoff dates to apply, which are 30 days from the initial trial date. (Code of Civil Procedure section 2024.020.) The court is unable to grant the relief sought here since the discovery cutoff dates have already expired. For these reasons, the motion is denied.

Defendant's Motion to Compel Further Discovery Responses and Sanctions

The motion is denied as the discovery cutoff date has expired in this action and the court no longer has the authority to hear the discovery motion. (*Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568.)

7. S-CV-0040670 NAYYAR, MANOJ v. K. HOVANIAN AT FIDDYMENT

The motion for summary judgment is continued to Thursday, July 9, 2020 at 8:30 a.m. in Department 42. While the reply papers were filed in timely fashion, they were not routed to the court for review in time for the current hearing date. The motion is continued to allow the court to review the reply papers.

8. S-CV-0042098 Z BROS INVESTMENT v. CITY OF AUBURN

The motion for attorney's fees is dropped from the calendar at the request of the moving party.

9. S-CV-0042146 TAYLOR, GEORGE v. FORD MOTOR CO

The demurrer to the first amended complaint is continued to Thursday, June 25, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for the inconvenience.

10. S-CV-0042296 PETERSON, ELAINE v. HALL, SUSAN

Defendants' motion for a jury trial is granted. The court has discretion to allow a jury trial, where a party has waived this right, under such terms that are just. (Code of Civil Procedure section 631(g).) Defendants have made a sufficient showing that it intended to proceed with a jury trial but their counsel elected a court trial in error at the case management conference.

Trial in the matter shall remain as set for November 30, 2020 at 8:30 a.m. in a department to be assigned. The clerk shall change the case designation to a 5 day jury trial.

The motion to amend order is dropped from the calendar as no moving papers were filed with the court.

11. S-CV-0042340 MORENO, GABRIEL v. CASAS, JUAN

Defendants Keller Williams and Gary Aubin's Demurrer to the Second Amended Complaint

The demurrer is sustained with leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A review of the four causes of action within the second amended complaint (SAC) show that each is deficiently pleaded, failing to allege sufficient factual allegations against the moving defendants to support the claims. Thus, the demurrer is sustained as to the entire complaint.

While the SAC is deficiently pleaded, plaintiffs' discussion of ostensible agency within the opposition demonstrates an ability to remedy the defects within the SAC. For these reasons, the demurrer is sustained with leave to amend to afford plaintiffs an opportunity to allege sufficient factual allegations to support ostensible agency.

The third amended complaint shall be filed and served by June 29, 2020.

Defendants Keller Williams and Gary Aubin's Motion to Strike the Second Amended Complaint

The motion is dropped as moot in light of the court's ruling on the demurrer.

12. S-CV-0042578 STEARNS BANK v. LOOMIS SUBWAY

The motion for summary judgment is dropped from the calendar as no moving papers were filed with the court.

13. S-CV-0043050 SCOTT USA v. HEATH & CO

Defendant Heath Sherratt's motion to set aside default and default judgment is denied. The motion suffers from procedural and substantive defects. First, defendant has failed to attach a proposed answer as required under Code of Civil Procedure section 473(b). Further, defendant has failed to make a sufficient showing of excusable neglect to support setting aside the default and default judgment. Since defendant has failed to properly present the motion to the court or make the necessary showing to warrant relief, the motion is denied.

14. S-CV-0043244 JONES, LLOYD v. GUALCO, TIMOTHY

The motion for vexatious litigant determination is continued to Friday, June 19, 2020 at 8:30 a.m. in the law and motion department to be heard by the Honorable Steven Howell.

15. S-CV-0043684 TOWNSEND, ROBERT v. GARD, DAVID

Defendants' demurrer to the complaint is sustained in part. In the current demurrer, defendants challenge the first, second, and seventh causes of action. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court reviews the claims keeping these principles in mind.

Looking to the first and second causes of action as to defendant Stephanie Gard, the allegations within the complaint are insufficient to support either breach of contract or breach of fiduciary duty against Mrs. Gard. There are no allegations that Mrs. Gard was a partner. To the contrary, the complaint expressly alleges the partners to the partnership agreement were Mr. Townsend and Mr. Gard. (Complaint ¶5.) Neither claim can stand against Mrs. Gard without allegations that she was partner. Thus, the first and second causes of action fail as to Mrs. Gard. The demurrer is sustained without leave to amend as to both the first and second causes of action. Plaintiff is afforded leave to amend the complaint to allege a separate cause of action for aiding and abetting breach of fiduciary duty against Mrs. Gard.

A review of the allegations within the complaint, when read as a whole, are sufficient to support the first and second causes of action against defendant David Gard. The demurrer is overruled as to the first and second causes of action against Mr. Gard.

Turning to the seventh cause of action, the complaint sufficiently alleges a claim for prescriptive easement by quiet title when those allegations are read as a whole. The demurrer is also overruled as to the seventh cause of action.

Plaintiff may file and serve the first amended complaint by June 29, 2020.

16. S-CV-0043978 SCHUFF STEEL MGMT v. TAHOE-TRUCKEE USD

The motion to strike the first amended complaint is continued to Thursday, June 25, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for the inconvenience.

17. S-CV-0044812 CARLISLE, BRIAN v. COUNTY OF PLACER

Petitioner's OSC re Preliminary Injunction

Ruling on Request for Judicial Notice

Respondents' request for judicial notice, submitted with its ex parte opposition papers, is granted under Evidence Code section 452.

Ruling on Request

Petitioner seeks a preliminary injunction to enjoin respondents from removing the shot screen installed at the Auburn Trapshooting Club (ATC) pursuant to Code of Civil Procedure section 525 et seq. A preliminary injunction preserves the status quo until a final determination on the merits of the pending action. (*Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal.App.3d 827, 832.) Preliminary injunctions, however, are not causes of action; a cause of action must exist before such injunctive relief may be granted. (*Shell Oil Co. v. Richter* (1942) 52 Cal.app.2d 164, 168.) The trial court must review two factors prior to issuing a preliminary injunction. First, the court determines the likelihood that petition will prevail on the merits of the action. (*Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1560; *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69.) Second,

the court looks to the interim harm that will occur if the injunction is denied as compared to the harm respondent will likely suffer if the injunction were issued. (*Ibid.*) The two factors are interrelated and the court must consider both factors. (*Ibid.*)

Petitioner sufficiently establishes both factors here. The verified petition/complaint alleges several causes of action, which include causes of action for public and private nuisance. The allegations within the verified complaint, along with the evidence submitted in petitioner's supporting declarations, sufficiently establish his claims for public and private nuisance. Petitioner has also sufficiently shown that he will be irreparably harmed if the shot screen is removed, which includes a significant monetary loss along with an increase in downrange noise. (see generally Carlisle declaration; Carlisle supplemental declaration.) This evidence is sufficient to support maintaining the status quo by keeping the shot screen in place during the pendency of this litigation. Further, ATC agrees with maintaining the status quo in this instance, requesting that the shot screen remain in place during the pendency of this litigation. (see generally ATC Response.) For these reasons, petitioner's request for preliminary injunction is granted as prayed.

The final issue to address is the amount of the undertaking. The court must require an undertaking to cover the damages the enjoined may suffer if the court ultimately determines the petitioner was not entitled to the injunction. (Code of Civil Procedure section 529(a).) The court has carefully considered the briefing on the issue. Taking into account the extensive harm to Carlisle, the potential harm to ATC, and a lack of harm shown by Placer County, the court determines an undertaking of $10,000 is appropriate in this instance.